Supreme Court, U.S.
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No. 05-67

In the
Supreme Court of the United States

ALLAN J. RITTENHOUSE,
Petitioner,

v.

SAUL EISEN, U.S. TRUSTEE,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Are uncollected pre-petition attorney fees for debtors counsel discharged upon the debtor receiving their discharge?

PARTIES TO THE PROCEEDING

Petitioner is:
Allan J. Rittenhouse

Respondent is:
Saul Eisen

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Allan J. Rittenhouse., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW AND JURISDICTION

The opinion of the Sixth Circuit (Pet. App. 1a–5a) is published at 404 F.3d 395. The opinion of the district court (Pet. App. 6a) is published at 287 B.R. 906, and the opinion of the bankruptcy court (Pet. App. 18a) is published at 292 B.R. 583. The Court of Appeals issued its opinion on April 7, 2005. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

Section 329 of the Bankruptcy Code (11 U.S.C. § 329)

§ 329. Debtor's transactions with attorneys.

> (a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the sources of such compensation.
>
> (b) If such compensation exceeds the reasonable value of any such services, the court may cancel any

such agreement, or order the return of any such payment, to the extent excessive, to –

(1) the estate, if the property transferred-

(A) would have been property of the estate; or

(B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or

(2) the entity that made such payment.

Section 362 of the Bankruptcy Code (11 U.S.C. § 362)

§ 362. Automatic stay.

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title ... operates as a stay, applicable to all entities, of –

* * *

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title. ...

Section 524 of the Bankruptcy Code (11 U.S.C. § 524)

§ 524. Effect of discharge.

(a) A discharge in a case under this title –

* * *

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived ...

Section 727 (11 U.S.C. § 727)

§ 727. Discharge.

(a) The court shall grant the debtor a discharge. ...

(b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter. ...

STATEMENT OF THE CASE

This case involves the relationship between bankruptcy debtors and their attorneys in chapter 7 cases. Section 329(a) requires a debtor's attorney to disclose compensation "paid or agreed to be paid ... for services rendered or to be rendered in contemplation of or in connection with" the bankruptcy case. 11 U.S.C. § 329(a). Section 329(b) requires the bankruptcy court to scrutinize those fees and agreements on a standard of reasonableness, and to cancel the agreement or require the return of payments to the extent excessive. 11 U.S.C. § 329(b). Thus, Congress explicitly recognized that there would be some cases in which debtors would have paid their attorneys before their petitions were filed, and there